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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,656	03/30/2004	Kyle E. Dayley	MWT 04-01	3390

22823 7590 12/31/2007

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EXAMINER	
THAKUR, VIREN A	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
12/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/812,656	DAYLEY ET AL.	
	Examiner	Art Unit	
	Viren Thakur	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-20* is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The rejection of claims 1-20 under 35 U.S.C. 112, second paragraph has been withdrawn.

2. As a result of the amendment to the claims, the rejection of claims 1,2,6 and 8-10 under 35 U.S.C. 102(b) as being anticipated by Ricke et al. (US 5547695) has been withdrawn.

3. As a result of the amendment to the claims the rejection of claims 1, 6-7, 9-10 and 13 under 35 U.S.C. 102(b) as being anticipated by McNeel et al. (US 6412397) has been withdrawn.

4. As a result of the amendment the rejections of claims 1-10 and 13-19 as being unpatentable over Dayley (US 5306133) in view of Bornhorst et al. (US 6174556); claim 11 over Dayley and Bornhorst et al. and in further view of Fay; claim 12 over Dayley and Bornhorst et al. and in further view of Kuchuris are withdrawn.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 3-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817) in view of Fay (US 4212609).

The references to Pavan and Fay are taken as cited in the prior Office Action, mailed May 31, 2007.

Regarding the new limitations to instant claims 1 and 6, wherein a cutting segment comprises a cup having a peripheral shape defined by a continuous shaped blade which crimps the first and second layer together, it is noted that Pavan teach a cup shaped cutting roller (Figure 1, Item 31, shown in cross-section in figures 9 and 10) which provides a cutting punch. In providing a cutting punch Pavan separates the multi-

layered dough piece from the web, and the edges of the layers would have been crimped, as shown in figures 9 and 10. Additionally, as can be seen in figure 1 and though the cross section in figures 9 and 10, the die cutting roller has a cup.

Regarding the limitations of instant claims 1 and 6, of directing pressurized gas through the cutting segment at the dough piece to discharge the dough piece form the cutting segment while pulling the web scrap away from the dough piece, Pavan is silent in teaching this limitation. As previously discussed, Fay is relied on to teach a die cutting roller for dough based products wherein pressurized air is used to eject the formed substance form the die cavity. Fay teaches improving the forming shaped products using the die cavity cutting roller by being able to rapidly and positively eject the shaped product form the die cavity (Column 1, lines 10-18 and lines 49-57). Fay further teaches that the air is passed through a conduit (Figure 3, Items 50 and 51) that ejects the shaped food product from the die (Column 4, lines 26-41).

Thus, both Fay and Pavan teach using a rolling cutter element to shape a dough based food product. Fay teach that using air that passes through the cylindrical cutting roller assists in releasing the shaped dough and further provides rapid shaping and extracting of the dough based food product (Column 1, lines 10-18). Additionally the air would have prevented the shaped food product form sticking within the cavity (Column 1, lines 42-45). Given these teachings it would have been obvious to one having ordinary skill in the art to provide a conduit through which the pressurized air would have communicated with the die as taught by Fay for the purpose of preventing the shaped dough product from sticking to the cavity. Such a modification would have

resulted in the rapid production of shaped dough products without having to stop the automated process for removing stuck pieces. Since both Fay and Pavan are similar in teaching using die cutting rollers, to employ the roller of Fay, which comprises pressurized air to release the cut dough for the die cutting roller of Pavan (Figure 1, item 31) for the reasons discussed above, would inherently have resulted in the cutting of the segment while pulling the web scrap away from the dough piece. The web scrap of Pavan is considered to have a pulling force applied thereon by the conveyor underneath it and also by the force of gravity at the collection end of the web scrap.

Regarding instant claims 3 and 10, the dough piece of Pavan is moved in a first direction along a horizontal plane (Figure 1, Item 33) and the web scrap is moved in a second direction at an angle of between 5° and 75° as can be seen by the angle of the web scrap shown in figure 1, item 35.

Regarding instant claims 4, figure 10 shows that the two layers when cut by the die cutting roller form a chamber there between.

Regarding instant claim 5, the dough pieces are discharged onto a conveyor, as discussed above. Regarding instant claim 7, Pavan teaches the cutter mechanism comprising a rotating ring cylindrical member (Figure 9, See center of item 31). In being a cylindrical member with a hole that comprises a beam that allows the cylinder to rotate, the cylindrical cutting member further comprises a ring and on this ring lies the cutting elements.

Regarding instant claims 9, Fay teaches a gas conduit, gas port employed on the rolling cutter for the purpose of releasing the cut dough products, as discussed above and in the prior Office Action, mailed May 31, 2007.

8. Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817) in view of Fay (US 4212609) as applied to claims 1,3-7 and 9-10 above, and in further view of Funabashi et al. (US 4608918).

Pavan and Fay are taken as applied above.

Regarding the new claim limitations wherein the shaped blade has a stepped cutting edge and the cutting step comprises pressing the stepped cutting edge against the dough sheet, prior art is silent in explicitly teaching pressing *the* stepped cutting edge against the dough sheet. However the prior art teaches using a cutting edge which is pressed against the dough sheet. Funabashi et al. is relied on to also teach the concept of sealing two layers together with an internal cavity therein. As can be seen in figure 2, the shaped blade comprises a stepped cutting edge. The prior art teaches that it has been conventional to use a stepped cutting edge to seal two layers of a food product together. Therefore to use a stepped cutting edge would not have provided a patentable feature over the prior art.

9. Claim 11 is rejection under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817) in view of Fay (US 4212609) as applied to claims 1,3-7 and 9-10, above, and in further view of Fay (US 3427649).

The reference to Fay '649 and the reasons for rejection are taken as cited in paragraph 11 of the prior Office Action, mailed May 31, 2007.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817) in view of Fay (US 4212609), as applied to claims 1,3-7 and 9-10, above, and in further view of Kuchuris (US 3536014).

The reference to Kuchuris and the reasons for rejection are taken as cited in paragraph 12 of the prior Office Action, mailed May 31, 2007.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817) in view of Fay (US 4212609), as applied to claims 1,3-7 and 9-10, above, and in further view of McNeel (US 6412397).

The reference to McNeel and the reasons for rejection are taken as cited in paragraph 13 of the prior Office Action, mailed May 31, 2007.

12. Claims 14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817) in view of Fay (US 4212609) as applied to claims 1, 3-7 and 9-10 above, and in further view of Potter Jr., et al. (US 3384495).

With regard to instant claim 14, Pavan and Fay are taken as applied above. Claim 14 differs in reciting wherein cooking the dough piece to expand a center portion of the dough piece into a sealed hollow chamber bounded by the continuous crimped edge and by portions of the first and second layer.

It is noted that Pavan teaches a chamber formed between the crimped edge and the first and second layer. Pavan also teaches cooking to expand the product (Column 4, lines21-24), but is silent in a sealed hollow chamber (column 4, lines 20 to 24).

Potter Jr. et al. teach a shaped snack food made from a sheet of dough (Column 1, lines 14-19). Potter Jr. et al. further teach punching several small holes in the blade portion of the pieces to restrict puffing of the blade portion (Column 2, lines 20-23). This means that puffing occurs but at a restricted rate. This is supported by Potter Jr. et al. on column 2, lines 29-40. Potter Jr. et al. also teach that no holes are provided in the handle portion, and this item also puffs up (Column 2, lines 23-24).

The prior art thus teaches that to employ holes results in restricted expansion in comparison to not employing holes at all. It is noted that Pavan teaches drawbacks to not including slits (Column 1, lines 55-59). However, this teaches that cooking multilayered dough products that did not have slits was known in the art and if the advantages of the process of Pavan were not requisite to the cooked product, depending on the desired organoleptic and physical properties of the product, it would have been obvious to have a sealed chamber for the purpose of increasing the expansion of the dough product upon cooking.

Claims 16 and 17 are rejected for the reasons discussed above, with respect to claims 3 and 10.

Regarding instant claim 18, Pavan is silent in teaching wherein the thickness of the crimped edge is less than that of the dough sheet. Nevertheless, by changing the width of the dough piece (Figure 10, Item 34), it would have been obvious to the

ordinarily skilled artisan that the thickness of the crimped edge would have been less than that of the dough sheet. Therefore to change the thickness of the crimped edge would have been a change in size and shape that would not have provided a patentable feature over the prior art. Regarding instant claim 19, Pavan teaches cutting using a plurality of cutting segments, as previously discussed. Regarding instant claim 20, Pavan teaches the dough products can be made form potatoes (Column 2, Line 64 to Column 2, Line 3). Therefore to form two layers of dough using potato would not have provided a patentable feature over the prior art.

13. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pavan (US 6168817), Fay (US 4212609) and Potter Jr., et al. (US 3384495) as applied to claims 14 and 16-20 above, and in further view of Funabashi et al. (US 4608918).

The rejection is taken as applied above with respect to claims 2 and 8.

14. Claims 4, 14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jean (US 2615809) in view of Pavan (US 6168817) and in further view of Fay (US 4212609).

Regarding instant claims 1 and 14, Jean teaches providing a dough sheet having a first and second layer and cutting the dough piece, which crimps the ends of the dough piece together, as shown in figure 1, item 22 and figure 4, which is the finished

product. Regarding instant claim 4, Jean teaches cooking the dough piece which results in a puffed sealed product having a continuous edge (column 4, lines 1-3).

The claim differs in forming a web scrap in the dough sheet.

Pavan is relied on to teach a conventional process for forming a three-dimensional dough product having a crimped edge formed between two layers of dough (Figure 10) and wherein the dough process of forming the sealed dough product results in the formation of a web scrap (See Figure 1, Item 35). It is noted that the production of a web scrap is also dependent on the shape of the cutting surface. A rounded cutting surface, as taught by Pavan in figure 1, would have resulted in the formation of scrap while a square surface wherein square pieces share an edge would have resulted in less web scrap. It is noted that Jean teaches that it has been known in the art to provide different shapes to the laminated dough pieces (Column 1, lines 10-13). Therefore to employ the process of Pavan, wherein a web scrap is developed which is subsequently recycled, would have been obvious depending on the type of shapes used to form the laminated dough piece of Jean and for minimizing the waste by recycling the web scrap to form more product.

The claims further differ in reciting wherein the cutter mechanism has a continuous shaped cutting edge.

The process of Pavan teaches that it has been conventional in the art to use a continuous shaped cutting edge, as shown in figure 1, item 31. Therefore to use a continuous shaped cutting edge would not have provided a patentable feature over the

prior art. Such a cutting edge would have resulted in the crimped dough product wherein the entire edge of the product has been sealed.

The claim further differs in separating the dough piece from the web scrap by directing a pressurized gas through the cutting segment at the dough piece to discharge the dough piece from the cutting segment while pulling the web scrap away from the dough piece in a selected direction with a force F, and then moving the dough pieces away from the web scrap.

Pavan teaches separating the dough piece from the web scrap by pulling the web scrap away from the dough piece in a selected direction and moving the dough pieces away from the web scrap (Figure 1, Items 31 and 33-35).

Fay is taken as applied above in paragraph 7.

Thus, both Fay and Pavan teach using a rolling cutter element to shape a dough based food product. Fay teach that using air that passes through the cylindrical cutting roller assists in releasing the shaped dough and further provides rapid shaping and extracting of the dough based food product (Column 1, lines 10-18). Additionally the air would have prevented the shaped food product form sticking within the cavity. Given these teachings it would have been obvious to one having ordinary skill in the art to provide a conduit through which the pressurized air would have communicated with the die as taught by Fay for the purpose of preventing the shaped dough product from sticking to the cavity (Column 1, lines 42-45). As a result, the cylindrical cutting element could be used for rapid production of shaped dough products without having to stop the automated process for removing stuck pieces. Since both Fay and Pavan are similar in

teaching using die cutting rollers, to employ the roller of Fay, which comprises pressurized air to release the cut dough for the die cutting roller of Pavan (Figure 1, item 31) for the reasons discussed above, would inherently have resulted in the cutting of the segment while pulling the web scrap away from the dough piece. The web scrap of Pavan is considered to have a pulling force applied thereon by the conveyor underneath it and also by the force of gravity at the collection end of the web scrap.

Regarding instant claims 16 and 17, the process of Pavan teaches that it has been conventional in the art to discharge the crimped dough piece onto a first horizontally moving conveyor while the web scrap is pulled at between 5 and 75 degrees from the horizontal plane for reusing the web scrap. Therefore to employ this particular arrangement would have been conventional to one having ordinary skill in the art for the purpose of separating the formed dough from the web scrap.

Regarding instant claim 18, the combined prior art is silent in teaching wherein the thickness of the crimped edge is less than that of the dough sheet. Nevertheless, by changing the width of the dough piece (Figure 10, Item 34), it would have been obvious to the ordinarily skilled artisan that the thickness of the crimped edge would have been less than that of the dough sheet. Therefore to change the thickness of the crimped edge would have been a change in size and shape that would not have provided a patentable feature over the prior art. Regarding instant claim 19, the combined prior art teaches cutting using a plurality of cutting segments, as previously discussed. Regarding instant claim 20, Pavan teaches the dough products can be made form potatoes (Column 2, Line 64 to Column 2, Line 3). Therefore to form two

layers of dough using potato would not have provided a patentable feature over the prior art.

15. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jean (US 2615809), Pavan (US 6168817) and Fay (US 4212609) as applied to claims 4, 14 and 16-20, above and in further view of Funabashi et al. (US 4608918).

The prior art is taken as applied above.

Regarding the new claim limitations wherein the shaped blade has a stepped cutting edge and the cutting step comprises pressing the stepped cutting edge against the dough sheet, prior art is silent in explicitly teaching pressing *the* stepped cutting edge against the dough sheet. However the prior art teaches using a cutting edge which is pressed against the dough sheet.

The type of cutting blade is taken as taught by Funabashi et al. and the reasons for employing the cutting blade of Funabashi et al. are taken as applied above in paragraph 8.

Double Patenting

16. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated

by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 1-3, 5-6 and 12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8, 10-18 and 20-28 of copending Application No. 10822038 in view of Pavan (US 6168817) and Funabashi et al. (US 4608918). The claims of the copending application encompass the limitations of the recited claims of the instant application. The copending claims, however, are silent in reciting wherein the cutting segment comprises a cup having a peripheral shape defined by a continuous shaped blade and is further silent in reciting pulling the web scrap away from the dough piece in a selected direction with a force F, and then moving the dough piece away from the web scrap. The copending claims are further silent in reciting wherein the second conveyor moves at an angle of between 5 and 75 degrees.

Pavan recites a cutting segment comprising a cup having a peripheral shape defined by a continuous shaped blade (See Figure 1, item 31). Pavan further teaches pulling the web scrap away from the dough piece at an angle of between 5 and 75

degrees (Figure 1, Item 35) and a conveyor for the dough piece (Figure 1, Item 33). Therefore it would have been obvious to employ these steps to the method of the copending application, since Pavan teaches that these are conventional means for separating the shaped dough from the web scrap.

Regarding instant claim 2, the copending claims are silent in reciting the stepped cutting edge. Fusabashi teaches that it has been conventional to use a stepped cutting edge to form a sealed dough product (Figure 2). Therefore to use a stepped cutting edge would not have provided a patentable feature over the prior art.

This is a provisional obviousness-type double patenting rejection.

18. Claims 14-15, 17 and 19-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8, 10-18 and 20-28 of copending Application No. 10822038 in view of Pavan (US 6168817) and Funabashi et al. (US 4608918) as applied to claims 1-3, 5-6 and 12 above and in further view of Jean (US 2615809). The copending claims encompass the limitations of the instant claims, but are silent in the cooking step which forms a sealed hollow chamber. Jean teaches forming a dough product from two layers which is cooked in oil and subsequently expands to form a sealed hollow tubular shape (Figure 4; Column 1, lines 31-51). Therefore to cook the shaped dough would have been obvious for the purpose of expanding the dough to form a sealed hollow chamber therein.

Response to Arguments

19. Regarding the double patenting rejections, applicant states that the copending application is not prior art. This is not persuasive. In order for a double patenting rejection to be proper, the application must be copending and have a common inventor, which is the case.

20. On page 12 of the response, applicant states that Pavan does not disclose cut dough pieces that are separated from the web scrap using the simultaneous application of air pressure and pulling of the web scrap away from the dough pieces in a selected direction with force, followed by movement of the dough pieces away from the web scrap. This argument is not persuasive. As shown in figure 1, the web scrap is pull to some degree for the reasons discussed above. Also the dough pieces move away from the web scrap on conveyor 33. Regarding the simultaneous application of air pressure and puling, it is noted that based on the teachings of Fay, it would have been obvious to one having ordinary skill in the art to modify the die cutting roller of Pavan to have pressurized air sent through the cutting elements for the purpose of preventing the sticking and providing release of the cut dough from the cutting elements. Motivation to use the die cutting roller of Fay lies in the fact that process of Fay is also directed to dough, other than meat product, such as cookie dough (Column 1, line 39). Pavan

teaches that the dough used in the apparatus can be made from other materials, such as potato or cereal and other starchy products (see abstract; column 1, lines 20-21). Pavan GB 2266489 is also cited as additional evidence that sticking of dough has been a known problem in the art for which pressurized air is used to release the dough from the cutting element.

21. Regarding the pulling force, as discussed above, some level of pulling is applied to the web scrap as a result of the conveyor maintaining the web scrap thereon and leading the dough toward the collection end. As a result it would have been obvious to the ordinarily skilled artisan that at the point where the scrap meets the conveyor (35) there would have been a pulling force. There also would have been a pulling force at the end of the collection, near item 36, as a result of gravity.

22. Regarding applicant's argument about crimping on page 13 of the response, it is asserted that the product is crimped as a result of the die cutting roller, item 31 and not the rollers 16 and 17. Even further, crimping is defined as a process of pinching and pressing down the edges for the purpose of sealing layers. The die cutting roller of Pavan, (item 31) can be seen performing this action.

23. Regarding applicant's argument on page 13 that the interior portion of Pavan would not be a sealed hollow chamber is persuasive, however Potter Jr. et al. has been cited as evidence for having a sealed chamber, as discussed above. It is noted

however that the claims are not clear as to the orientation of the dough prior to cooking. Furthermore, instant claim 4 only recites wherein as a result of cooking a chamber is formed in the dough piece which is sealed by a continuous edge, which Pavan teaches. This recitation does not limit the chamber to a sealed chamber but rather to a chamber which is sealed by a continuous edge. Amending the recitation of claim 4 to correspond with the cooking limitation in claim 14 would clarify this issue. It is noted that claim 4 previously dependent from claim 3 as well, thus resulting in the indefiniteness of the claim.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2266489 is cited as further evidence of two sheets of dough forming a three-dimensional product. The process also uses negative pressure to hold the dough within the cutting device to form a concave shape (Page 4, line 34 to page 5, line 1) and using air to detach the snacks from the cutter roll using compressed air (Page 7, lines 12-15). US 5558894 also teaches forming a three-dimensional product that has a sealed chamber upon cooking.

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Viren Thakur
Examiner
Art Unit: 1794

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1794